

Umed Singh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Sep-07-2012

Appellant : Umed Singh

Respondent : The State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Amit Singh

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.2138/2006 Umed
Singh VERSUS State of Madhya Pradesh
----- Shri Amit Singh, counsel
for the appellant. Shri S.K.Kashyap, Public Prosecutor for the State/ respondent.

JUDGMENT

(Delivered on the 7th day of September, 2012) The appellant has preferred this appeal against the judgment dated 16.10.2006 passed by the learned Special Judge, Satna in Special No.61/2004, whereby the appellant was convicted and sentenced as under:- Conviction Jail Sentence Sentence Default of Fine Sentence 341 of IPC S.I. for one - - month 294 of IPC R.I. for 45 days - - 323 of IPC R.I. for 3 months - - 3 (1) (x) of R.I. for 2 months Rs.500/- R.I. for one SC/ST month (Prevention of Atrocities) Act :- 2 :- Criminal Appeal No.2138 o

2. Prosecution's case, in short, is that, on 25.5.2003, at about 6 a.m. in the morning, the complainant Mst. Durghatiya (P.W.1) was coming back after answering her call of nature to her village Kuwa (Police Station Kolgawan, District Satna). When she reached near her house, the appellant Umed Singh stopped her and abused her with obscene words and assaulted her by a stick causing injuries in her right hand and arm. Also some injuries were caused on her head and remaining parts of the body. The co-accused Bhola Singh came to the spot and told the complainant that she forgot her status and she should live like a 'Chamarin'. On shouting of Mst. Durghatiya, her husband Durjan (P.W.5), daughter Shiv Kumari (P.W.4), came to the spot. Thereafter, the complainant Mst. Durghatiya went to the Police Station AJK, Satna and lodged an FIR, Ex.P/1. She has also stated that few days prior to the incident, the appellant Umed Singh told her to reap the crop of wheat but, the complainant went to the field of another cultivator and did not do the work in the field of the appellant Umed Singh and therefore, on 23.5.2003, when Neetu was riding a bicycle, the co-accused Bhola Singh detained her and abused her. The complainant was sent to the hospital for her medico legal examination and treatment. Dr.R.S.Gautam (P.W.10) examined her and gave a report, :- 3 :- Criminal Appeal No.2138 of 2006 Ex.P/6. He found that the victim Durghatiya sustained 4 contusions, each on right hand, right forearm, right parietal region of head and back of the head. The complainant was referred for her x-ray examination but, no bony injury was found to her. After due investigation, a charge-sheet was filed before the JMFC, Satna, who committed the case to the Special Court.

3. The appellant abjured his guilt. He has stated that there was an enmity between the parties. One Panchi Bai (P.W.9) was the contestant for the post of Sarpanch and the family of the complainant supported her, whereas the appellant supported the candidate of the opposite group and therefore, he was falsely implicated in the matter. However, no defence evidence was adduced.

4. After considering the evidence adduced by the prosecution, the learned Special Judge, convicted and sentenced the appellant as mentioned above.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the appellant has submitted that it is nowhere established that the complainant was insulted due to caste. On the contrary, it is apparent that she took her remuneration for reaping the wheat and she went to the field of another agriculturist and she did not do any work in the field of the appellant Umed :- 4 :- Criminal Appeal No.2138 of 2006 Singh. There is no allegation against the appellant Umed Singh that he abused the victim on the basis of her caste and therefore, no offence punishable under section 3 (1) (x) of the SC/ST (Prevention of Atrocities) Act, 1989 (hereinafter it will be referred to as the 'Special Act') is made out against the appellant. Similarly, there is no act done by the appellant to restrain the complainant wrongfully and therefore, no offence punishable under section 341 of IPC is made out. The actual words told by the complainant, does not fall within the purview of obscene words and they can be considered as filthy abuses and therefore, in absence of obscene words, the appellant cannot be convicted for the offence punishable under section 294 of IPC. Under such circumstances, it is prayed that that appellant be acquitted. In the alternate, it is submitted that the appellant has faced the trial and appeal for the last 8 years and therefore, he should not be sent to the jail again.

7. On the other hand, the learned Panel Lawyer has submitted that the conviction and sentence directed by the trial Court appears to be correct and no interference is required in the appeal.

8. On the basis of the submissions made by learned counsel for the parties, it is to be considered as to whether the appellant can be convicted for the offence punishable :- 5 :- Criminal Appeal No.2138 of 2006 under sections 294, 341 and 323 of IPC?. Whether the appellant could be convicted for the offence punishable under section 3 (1) (x) of the Special Act?. And whether the sentence awarded by the trial Court can be reduced?.

9. Durghatiya (P.W.1), Neetu (P.W.2), Shiv Kumari (P.W.4) and Durjan (P.W.5) were examined as eye witnesses. They have stated that when Durghatiya was coming back, after answering her call of nature, the appellant Umed Singh assaulted her by a stick and also told Hum tumhare gand me danda dal denge. Hum chamarin ko chamrin bana denenge tumhe madar chod. but, such statements

are not given by these witnesses in their case diary statements as well as in the FIR, Ex.P/1 and therefore, the statements given by these witnesses to that fact, appears to be exaggeration of the facts, which cannot be accepted. In the FIR, Ex.P/1, it is nowhere alleged that the appellant Umed Singh said something about the caste of the complainant. It is specially told that when Bhola Singh came to the spot, he said something about the caste but, at present, Durghatiya did not say anything against Bhola Singh. It would be apparent from the FIR that Neetu was not the witness to the incident, in which the assault took place with her mother but, she was obstructed when she was riding a bicycle. In the FIR, it was mentioned that one day before the incident, Bhola Singh :- 6 :- Criminal Appeal No.2138 of 2006 obstructed the witness Neetu, when she was riding a bicycle but, Neetu has accepted in para 3 of her statement that she did not ride the bicycle at all. She did not allege in story about any restrain done by Bhola Singh at the time when she was riding a bicycle. Therefore, story mentioned in the FIR and told by the other witnesses cannot be accepted that the witness Neetu was wrongfully restrained when she was riding a bicycle. That portion of the story appears to be a falsehood.

10. Similarly, looking to the FIR, Ex.P/1, it is apparent that Neetu was not present at the time of the incident when the complainant Durghatiya was assaulted. Shiv Kumari (P.W.4) and Durjan (P.W.5) have stated that Bhola abused the complainant with words based upon the caste but, no such allegation was made against the appellant. There is a lot of contradiction between the statements given by Shiv Kumari and Durjan. Shiv Kumari has stated that Bhola Singh came after the assault and told the appellant Umed Singh to assault the complainant and he told some abuses based upon the caste, whereas Durjan has stated that the appellant Umed Singh and Bhola Singh both assaulted his wife from very beginning but, he did not say that the appellant gave any abuses on the basis of the caste. Looking to such contradictions, it would be apparent that the :- 7 :- Criminal Appeal No.2138 of 2006 appellant did not abuse the complainant on the basis of the caste but, such version was included in the FIR, so that the case could be registered in the Police Station AJK. According to the evidence given by the complainant, it appears that the incident took place because the complainant did not go to reap the wheat in the field of the appellant Umed Singh. Under such circumstances, no incident took place on the basis of the caste and the appellant

did not insult the complainant on the basis of the caste and therefore, no offence punishable under section 3 (1) (x) of the Special Act is made out against the appellant. The Special Judge has erred in convicting the appellant for that offence.

11. Similarly, it is said by the complainant that the appellant Umed Singh started assaulting her and abused her and therefore, there was no intention of the appellant to restrain the complainant to go in a particular direction but, she was stopped by herself due to assault caused by the appellant and therefore, no offence punishable under section 341 of IPC is made out against the appellant for wrongfully restraining the complainant Durghatiya. The Special Judge has wrongly convicted the appellant for offence punishable under section 341 of the IPC.

12. For the offence punishable under section 294 of IPC, it is necessary that some obscene words must have :- 8 :- Criminal Appeal No.2138 of 2006 been uttered by the accused. Durjan (P.W.5) has stated that the appellant was abusing the victim by filthy abuses but, he did not told the words of such abuses. Similarly, Shiv Kumari (P.W.4) did not say anything about the obscene words. If the appellant had stated some obscene words before the complainant then, those words must be heard by the other witnesses also. Under such circumstances, only testimony of the complainant Durghatiya cannot be believed on this point that the appellant had stated some obscene words before her. Durjan, Neetu and Shiv Kumari are close relatives of the complainant Durghatiya and therefore, it cannot be said that they had any adverse interest with the complainant. Under such circumstances, since no corroboration has been done by other eye witnesses namely Shiv Kumari, Neetu and Durjan then, testimony of the complainant cannot be believed in this context. It is not at all proved that the appellant uttered some obscene words before the complainant at the time of the incident. Under such circumstances, the appellant cannot be convicted for the offence punishable under section 294 of IPC. Learned Special Judge has erred in convicting the appellant for the offence punishable under section 294 of IPC.

13. Durghatiya (P.W.1) has stated that the appellant assaulted her by a stick. Shiv Kumari (P.W.4) and Durjan :- 9 :- Criminal Appeal No.2138 of 2006 (P.W.5) have also corroborated her version that she was being assaulted by the appellant. The

testimony of the complainant is duly corroborated by the evidence of Dr.R.S.Gautam, who proved the injuries of the victim Durghatiya. Under such circumstances, it appears that the appellant assaulted the victim Durghatiya by a stick.

14. The appellant took a defence that there was an enmity between the parties due to election of Sarpanch. The complainant and her group was supporting one Panchi Bai (P.W.9), whereas the appellant was supporting someone else. However, Panchi Bai (P.W.9) was examined to prove the caste certificate of the complainant but, no question was asked by the defence counsel to the fact that the appellant was of her opposite group. No single question was asked about that fact of enmity. Under such circumstances, it appears that the defence taken by the appellant of the enmity is not correct. Under such circumstances, the evidence given by the complainant that the appellant assaulted her, appears to be acceptable and due to corroboration by FIR and medical report, testimony of the complainant Durghatiya on this point is established and it is proved that the appellant assaulted the complainant Durghatiya causing her injuries.

15. The appellant did not take any plea of right of private defence or any sudden or grave provocation. Under :- 10 :- Criminal Appeal No.2138 of 2006 such circumstances, when he assaulted the victim for four times, he ought to have known the result of his assault and therefore, it is established that he had voluntarily caused hurt to the victim Durghatiya. Under such circumstances, conviction directed against the appellant for the offence punishable under section 323 of IPC was proper and correct.

16. So far as the sentence is concerned, it is true that the appellant assaulted the victim Durghatiya causing her some injuries but, he was the first offender, who was only 21 to 23 years of age at the time of the incident and therefore, it is not a case in which he may be sent to the jail again. He remained in the custody for 40 days during the pendency of the case before the Additional Chief Judicial Magistrate, Satna. Under such circumstances, his custody period, appears to be a sufficient sentence and therefore, he may not be sent to the jail again but, some fine may be imposed upon him for that offence.

17. On the basis of the aforesaid discussion, it is apparent that no offence punishable under sections 294 and 341 of IPC as well as offence punishable under section 3 (1) (x) of the Special Act is made out against the appellant. Under such circumstances, appeal filed by the appellant is hereby partly allowed. Conviction as well as sentence directed for the offence punishable under sections 341 and -:- 11 -:- Criminal Appeal No.2138 o

294. of IPC and section 3 (1) (x) of SC/ST (Prevention of Atrocities) Act is hereby set aside but, conviction for offence punishable under section 323 of IPC is maintained. However, sentence is reduced to the period, which he has already undergone in the custody with a fine of Rs.1,000/-. The appellant is directed to deposit the remaining fine amount before the trial Court within 2 months from today, failing which, he shall undergo for a period of 3 months rigorous imprisonment. If fine is deposited then, the complainant Durghatiya W/o Durjan, R/o village Kuwa, Police Station Kolgawan, District Satna shall get a sum of Rs.500/- by way of a compensation, out of that fine amount.

18. Registry is directed to issue a supersession warrant accordingly, so that the appellant may be released from the jail, if he deposits the fine amount.

19. Attention of Principal Registrar (Judicial) is invited to the fact that the learned Special Judge has sentenced the appellant for the offence punishable under section 3 (1) (x) of the SC/ST (Prevention of Atrocities) Act but, a sentence of only 2 months was awarded, which is lesser than the statutory limit. No specific ground has been mentioned for such lower sentence directed by the then Special Judge, Satna Shri S.K.Jain and therefore, comments of the then -:- 12 -:- Criminal Appeal No.2138 of 2006 learned Special Judge, Satna be obtained and be placed before me in my chamber.

20. Copy of the judgment be sent to the trial Court along with its record for information and compliance. (N.K.GUPTA) JUDGE 7 9/2012 Pushpendra -:- 13 -:- Criminal Appeal No.2138 of 2006 Charges of offence punishable under section 341 of IPC were to be framed for wrongful restrain to the victim Neetu, whereas Neetu herself did not say that she was riding a bicycle and she was wrongfully detained by Bhola Singh, therefore, by hearsay evidence

